

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DAVID L. POWELL,

Plaintiff(s)

vs.

ANTHEM PRESCRIPTION  
MANAGEMENT INC.,

Defendant(s)

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Case Number: 1:04cv468

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on June 16, 2005 Report and Recommendations (Doc. 30). Subsequently, the plaintiff filed objections to such Report and Recommendations.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

IT IS ORDERED that Defendant's motion to dismiss is hereby GRANTED. It is further ordered that plaintiff's motion for summary judgment is hereby DENIED and his motion for immediate ruling is hereby DENIED as MOOT.

The Court certifies pursuant to 28 U.S.C. § 1915(a) that for the reasons stated in the Report and Recommendation an appeal of this order would not be taken in good faith and therefore denies plaintiff leave to appeal *in forma pauperis*. Plaintiff, a non-prisoner, remains

free to apply to proceed *in forma pauperis* in the Court of Appeals. See *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

IT IS SO ORDERED.

\_\_\_\_s/Susan J. Dlott\_\_\_\_  
Susan J. Dlott  
United States District Judge